



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2009-0596; FRL- 9691-3]

RIN 2040-AF41

Effective Date for the Water Quality Standards for the State of Florida's Lakes and Flowing Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an extension of the July 6, 2012, effective date of the “Water Quality Standards for the State of Florida’s Lakes and Flowing Waters; Final Rule” (inland waters rule) for six months to January 6, 2013. EPA’s inland waters rule currently includes an effective date of July 6, 2012, for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This extension of the July 6, 2012, effective date for the inland waters rule to January 6, 2013, does not affect or change the February 4, 2011, effective date for the site-specific alternative criteria provision.

DATES: The revision to §131.43 in this final rule is effective January 6, 2013. The effective date of §131.43, revised on December 6, 2010 (75 FR 75805), and delayed on March 7, 2012 (77 FR 13949) to July 6, 2012, is further delayed until January 6, 2013 .

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-OW-2009-0596. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information of which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention: Docket ID No. EPA-HQ-OW-2009-0596. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202-566-1744. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; telephone number 202-564-5257; email address: bone.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be

indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits.

Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to lakes and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities of which EPA is now aware that potentially could be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen/phosphorus pollution in Florida's waters may be indirectly affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be indirectly affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 *CFR* 131.43, which is the final rule. If you have questions regarding the applicability of this action to

a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

On December 6, 2010, EPA's final inland waters rule, entitled "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule," was published in the **Federal Register** at 75 *FR* 75762, and codified at 40 *CFR* 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and chlorophyll a for the different types of Florida's inland waters to assure attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translated Florida's narrative nutrient provision at Subsection 62–302.530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.) This final inland waters rule seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

III. Revised Effective Date

A. Rationale for Extending the July 6, 2012 Effective Date

As stated in the rule itself (75 *FR* 75762, December 6, 2010), the inland waters rule was originally scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 *CFR* 131.43(e), which took effect on February 4, 2011. On March 7, 2012, EPA published an extension of the effective date of the rule for four months to July 6, 2012 (77 *FR* 13497). On May 17, 2012 (77 *FR* 29271) EPA proposed a shorter-term extension of the July 6, 2012, effective date in order to avoid the confusion and inefficiency that could occur should Federal criteria become effective while EPA reviews State standards for approval or disapproval under CWA section 303(c). On June 7, 2012, the State of Florida Division of Administrative Hearings ruled in favor of the State's rule, enabling the State to officially submit its package to EPA on June 13, 2012.

Extending the July 6, 2012, effective date of EPA's inland waters rule to January 6, 2013, would avoid the confusion and inefficiency that may occur should Federal criteria become effective while EPA is reviewing Florida's rule. This six-month extension will provide EPA time to review and approve or disapprove Florida's rule under CWA section 303(c). If EPA approves Florida's rule, this six-month extension will also allow EPA to request permission from the Court to finalize a further extension of the January 6, 2013, effective date for a period of time for EPA to withdraw the Federal criteria corresponding to those State criteria approved by EPA. Finally, if the Court grants EPA permission to finalize a further extension of the January 6, 2013, effective date, this six-month extension will allow EPA to actually finalize such further extension of the January 6, 2013, effective date to allow EPA to withdraw Federal criteria corresponding to those State standards approved by EPA. If EPA does not approve Florida's standards, EPA expects that its inland waters rule would become effective January 6, 2013.

Note that regarding two portions of EPA's original inland waters rule – streams and default downstream protection values (DPVs) for unimpaired lakes – the U.S. District Court for the Northern District of Florida invalidated and remanded those two portions of the inland waters rule to EPA on February 18, 2012 (*FWF v. Jackson*, 4:08-cv-00324-RH-WCS). EPA is preparing to propose in a separate rulemaking process numeric nutrient criteria for such streams and default DPVs.

B. Public Comment

EPA received twelve comments on the proposed extension of the July 6, 2012, effective date. One commenter noted that any extension of the inland waters rule effective date does not prevent Florida from developing protective numeric nutrient standards. This commenter provided information showing that Florida continues to experience nitrogen and phosphorus-fueled algae blooms. This commenter asserted that the sooner numeric criteria are put in place, the sooner Florida waters will be on the path to being fishable, swimmable, and drinkable. EPA agrees with the commenter that control of excess nitrogen and phosphorus is important, however, EPA is finalizing this six-month extension of the effective date to allow EPA time to review the submitted State standards (discussed earlier) for approval or disapproval under CWA section 303(c). As mentioned earlier, having EPA's criteria take effect while EPA is reviewing the State standards could cause confusion and administrative inefficiency for the State and regulated entities, something the EPA wants to avoid. The commenter also argued against granting the longer extension of one year that was discussed in the proposed rule. EPA agrees with the

commenter and has finalized a six-month extension. The commenter also provided input on the submitted Florida numeric nutrient standards. Those comments are outside the scope of this rule.

The other eleven commenters supported the proposal to extend the effective date, arguing that the additional time would avoid the confusion and inefficiency that may occur should Federal criteria become effective prior to allowing full consideration of the Florida Department of Environmental Protection's (FDEP's) nutrient standards and withdrawal of Federal numeric nutrient criteria rulemakings in Florida. The commenters supported extension of the effective date by one year as discussed in the proposal rather than the proposed three-month extension. Some of these commenters also proposed that EPA extend the effective date beyond one year in case more time is needed to withdraw its Federal nutrient criteria.

EPA agrees that a longer extension than three months is warranted, but that six months is appropriate in order to provide sufficient time to allow EPA to take the actions described earlier. Therefore, based on public comment as well as the June 13, 2012, submission by Florida of its nutrient standards, EPA believes that a six-month extension is warranted.

EPA received several comments urging actions related to an EPA rulemaking under development (i.e., not the inland waters rule). These comments are outside the scope of this action and therefore EPA is not addressing them.

C. Good Cause Exemption

Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3), provides that “[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except ... (3) as otherwise provided by the agency for good cause found

and published with the rule.” Today’s final rule is a rule that relieves a restriction, i.e., that delays the effective date of a Federal rule. Today’s rule does not establish any requirements but rather merely extends the effective date of already-promulgated requirements. On this basis, EPA has determined that there is “good cause” for having this rule take effect upon publication in the *Federal Register*. EPA thus finds that this constitutes “good cause” under 5 U.S.C. 553(d)(3).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 *FR* 51735, October 4, 1993), since it merely extends the effective date of an already promulgated rule, and is therefore not subject to review under Executive Order 12866 and 13563 (76 *FR* 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 *CFR* 1320.3(b). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 *CFR* 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This final rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule merely extends the effective date of an already promulgated regulation.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small

governments. This final rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the effective date of an already promulgated regulation.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Subject to the Executive Order 13175 (65 *FR* 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. However, the rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally approved WQS in their respective jurisdictions. These Tribes are not

subject to this final rule. This rule will not impact the Tribes because it merely extends the date of already promulgated requirements.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 *FR* 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 *FR* 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (E.O.) 12898 (59 *FR* 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This action is not subject to E.O. 12898 because this action merely extends the effective date for already promulgated requirements.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief

statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Florida, Nitrogen/phosphorus pollution, Nutrients, Water quality standards.

Dated: June 28, 2012

Lisa P. Jackson,
Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131--WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

Subpart D--[Amended]

2. Section 131.43 is amended by revising paragraph (f) to read as follows:

§ 131.43 Florida.

* * * * *

(f) *Effective date.* This section is effective on January 6, 2013, except for § 131.43(e), which is effective February 4, 2011.

[FR Doc. 2012-16421 Filed 07/05/2012 at 8:45 am; Publication Date: 07/06/2012]